

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PHILLIP JEROME GARDNER,
Plaintiff,

07 Civ. 5653 (VM) (DFE)

- against-

MEMORANDUM AND ORDER
This is not an ECF case

MS. C.C. RIVERA, Shield # Unknown,
MR. SGT. ROSADO, Shield # Unknown,
MR. SGT. SEMMEL, Shield # Unknown,
MR. LIEUTENANT REILLY, Shield # Unknown,
and MR. JAMES WALSH, Superintendent,

Defendants.
-----x

DOUGLAS F. EATON, United States Magistrate Judge.

1. District Judge Victor Marrero has referred this case to me for general pre-trial supervision. On August 27, 2007, the U.S. Marshal served defendants Rivera, Rosado and Walsh. Subsequently, two "John Doe" defendants were identified as Sgt. Semmel and Lt. Reilly, and they were named in the Amended Complaint that was filed on November 15, 2007. Plaintiff must now arrange for the summons and Amended Complaint to be served upon Sgt. Semmel and Lt. Reilly.

2. Rule 4(m) of the Federal Rules of Civil Procedure provides:

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint [i.e., by March 14, 2008], the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period...

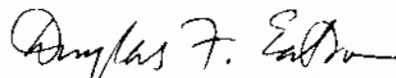
3. I direct the Pro Se Office to provide plaintiff with sufficient summonses and forms for service upon Sgt. Semmel and Lt. Reilly. Plaintiff must then fill out the forms and forward them to the U.S. Marshal, along with the summonses and sufficient copies of the Amended Complaint. I direct Mr. Gardner to

complete all action needed for formal service of the summons and Amended Complaint upon Sgt. Semmel and Lt. Reilly, as soon as possible.

4. If Mr. Gardner does not, by March 14, 2008, send me proof of service or good reasons for failure to make service, then I will recommend that the District Judge dismiss this lawsuit as to any unserved defendant.

5. Mr. Gardner is required to give prompt written notice, to the Pro Se Office and to my chambers, about any change of address. Failure to do may result in a dismissal of the lawsuit.

6. AAG Inna Reznik already represents the three defendants who were served earlier. I will hold an Initial Case Management Conference on January 31, 2008. I direct AAG Reznik to arrange for the prison authorities to bring Mr. Gardner to a telephone at 10:00 a.m. on January 31, 2008. I direct AAG Reznik to come to my chambers (Room 1360 at 500 Pearl Street) a few minutes before 10:00 a.m.



DOUGLAS F. EATON
United States Magistrate Judge
500 Pearl Street, Room 1360
New York, New York 10007
Telephone: (212) 805-6175
Fax: (212) 805-6181

Dated: New York, New York
December 14, 2007

Copies of this Memorandum and Order are being sent on this date by mail to:

Phillip Jerome Gardner
(#00-A-1955)
Sullivan Correctional Facility
Box 116, Riverside Drive
Fallisburg, NY 12733-0116

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Hon. Victor Marrero